No. VLC-S-S-217586
BC-Vancouver Registry

In the Supreme Court of British Columbia

Between

Action4Canada, Linda **Morken**, Gary **Morken**, Jane **Doe**, Ilona **Zink**, Valerie Ann **Foley**, Pastor Randy **Beatty,** Brittany **Wilson**

Plaintiffs

and

His Majesty the King in right British Columbia, **His Majesty the King** in right Canada. Prime Minister **Justin Trudeau,** Chief Public Health Officer **Theresa Tam**, Dr. Bonnie **Henry**, Premier John **Horgan, David Eby,** Adrian **Dix**, Minister of Health, Mike **Farnworth**, Minister of Public Safety and Solicitor General Omar **Alghabra**, Minister of Transport, **Vancouver Island Health Authority**, **The Royal Canadian Mounted Police** (RCMP), and the **Attorney General of Canada,** Peter **Kwok, South Coast British Columbia Transportation Authority**

Defendants

NOTICE OF APPLICATION

NAME OF APPLICANT: His Majesty the King in right of Canada, the Attorney General of Canada, Prime Minister Justin Trudeau, Chief Public Health Officer Dr. Theresa Tam, and Omar Alghabra, Minister of Transport (collectively, "**Canada**").

TO: the Plaintiffs

TAKE NOTICE that an application will be made by the Applicant to the presiding judge or Associate judge at the courthouse at 800 Smithe Street, Vancouver, BC on **October 20, 2025 at ~~9:45~~ am** for the orders set out in Part 1 below.
10:00 am

The applicant estimates that the application will take: one day.

[X] This matter is within the jurisdiction of an associate judge.

[ ] This matter is not within the jurisdiction of an associate judge.

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PART 1: ORDERS SOUGHT

1. That the Amended Notice of Civil Claim (**Amended Claim**) be struck in full, without leave to amend, pursuant to Rule 9-5(1);

2. His Majesty the King in Right of Canada and the Royal Canadian Mounted Police (**RCMP**) be removed from the style of cause;

3. Alternatively, if the Amended Claim is not struck, Canada be granted 30 days from the Order made in respect of this Application to file a Response to Civil Claim; and

4. Costs.

PART 2: FACTUAL BASIS

The Notice of Civil Claim

1. In 2021, the Plaintiffs sued multiple government entities and individuals for losses allegedly caused by public safety measures implemented in response to COVID-19.[1]

2. The Plaintiffs' 391-page Notice of Civil Claim (**Claim**) contained hundreds of footnotes and sought damages and over 200 declarations. It made wide-ranging allegations of conspiracy, sought rulings on questions of science, and alleged criminal conduct.

The Chambers Judge's Decision to Strike the Claim

3. This Court struck the Claim in 2022, with leave to amend. The chambers judge found that the Claim was clearly prolix, unanswerable, and "bad beyond argument".[2] The Court highlighted elements of the Claim that were improper, including the pursuit of court rulings on the proper interpretation of scientific data—a clearly non-justiciable issue.[3]

4. The Court struck the entirety of the Claim but left the door open for an amended claim that was intelligible, compliant with the *Supreme Court Civil Rules* (***Rules***), and confined to matters capable of adjudication by the BC Supreme Court (**Strike Decision**).[4]

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[1] Notice of Civil Claim [**Claim**].
[2] *Action4Canada v. British Columbia (Attorney General),* 2022 BCSC 1507 [**Strike Decision**] at paras. 32, 45.
[3] Strike Decision at paras. 52-53, 55.
[4] Strike Decision at paras. 46-47, 71.

The Court of Appeal Dismissed the Plaintiffs' Appeal

5. The Plaintiffs appealed the Strike Decision and that appeal was dismissed on February 23, 2024. The Court of Appeal held that it was up to the Plaintiffs to redraft the Claim within the well-known boundaries of proper pleadings established by the *Rules* and authorities, with "fair warning of the possible consequences" of pursuing claims identified as problematic in the Strike Decision.[5]

The Amended Notice of Civil Claim

6. On December 12, 2024, the Plaintiffs served the Amended Claim. While many conspiracy claims and footnotes were removed, much of the Amended Claim simply repackages the original Claim. The Amended Claim is 54 pages, seeks over 50 declarations and damages, and continues to contain claims that the chambers judge deemed "improper in a civil action".[6]

PART 3: LEGAL BASIS

The Amended Claim must be struck pursuant to Rule 9-5 without leave to amend

7. The Amended Claim must be struck because it (1) discloses no reasonable cause of action; (2) is scandalous, frivolous, and vexatious; and (3) is an abuse of process.

8. Paring down the 391-page Claim to 54 pages did not cure its fundamental deficiencies. The Amended Claim remains prolix,[7] and the causes of action have not been framed intelligibly or in a way that allows the defendants to know the case they must meet. The Plaintiffs' failure to satisfy essential pleading requirements despite the direction of the chambers and appeal judges is a violation of principles of judicial economy, finality, and integrity of the administration of justice and, therefore, an abuse of process. No amendments could conceivably save the Amended Claim and address the overwhelming defects it contains, and it therefore has no reasonable chance of success.

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[5] *Action4Canada v. British Columbia (Attorney General)*, 2024 BCCA 59 [**BCCA Reasons**] at para. 11.
[6] Strike Decision at paras. 52-58.
[7] A similar 58-page Amended Statement of Claim was struck in *Dorceus v. Ontario et al.*, 2024 ONSC 7087 at para. 48. See also *Adelberg v. Canada*, 2023 FC 252 [***Adelberg***] at para. 45, varied 2024 FCA 106.

1. The Amended Claim discloses no reasonable cause of action

9. The test to strike out a pleading is whether it is "plain and obvious" that the claim has no reasonable prospect of success.[8] The court must assume the facts pleaded to be true, except for allegations, assumptions, and speculation that are manifestly incapable of being proven.[9] To establish a reasonable cause of action, a pleading must (1) allege facts that are capable of giving rise to a cause of action; (2) indicate the nature of the action which is to be founded on those facts; and (3) indicate the relief sought, which must be of a type that the court has jurisdiction to grant.[10]

10. It is plain and obvious that the Amended Claim discloses no reasonable cause of action against Canada.

11. Out of the over 50 declarations sought in the Amended Claim, only two paragraphs appear to be directed at Canada: one invokes the "English Bill of Rights" and vaguely refers to "unwritten constitutional principles of Rules of Law, Constitutionalism and Democracy",[11] and the other seeks a broad and vague declaration that Canada has violated the Plaintiffs' "unalienable constitutional rights".[12]

12. The declaratory relief sought against Canada is improper and moot, as it will not settle a "live controversy" between the parties and thus fails the test of practical utility, which is a legal requirement for the granting of declaratory relief.[13] The impugned pandemic measures[14] are no longer in effect; there is no remedy left for the Court to order that will have any practical effect on any of the Plaintiffs' rights.[15] The complete absence of any factual basis underpinning the requested relief, and the inappropriate nature of the declarations requested, make it plain and obvious that the action cannot succeed.

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[8] *Nevsun Resources Ltd v. Araya*, 2020 SCC 5 [***Nevsun***] at para. 64.
[9] *Nevsun* at para. 64.
[10] *Adelberg* at para. 43.
[11] Amended Claim at para. 104.
[12] Amended Claim at para. 112.
[13] Strike Decision at para. 56.
[14] Amended Claim at paras. 32-33.
[15] As in *Tatlock v. British Columbia (Attorney General)*, 2025 BCCA 181.

13. To the extent that the declaratory relief related to general police powers implicates or involves the RCMP, the Plaintiffs seek sweeping restrictions to police powers and duties that would require significant amendments to existing legislation.[16] The relief sought is unconnected to any material facts pleaded.

14. The Amended Claim also seeks damages against Canada for alleged breaches of the *Canadian Charter of Rights and Freedoms*.[17] Action4Canada allege breaches of sections 2, 6, 7, and 15 of the *Charter*, and Linda and Gary Morken allege breaches of sections 7, 8, 9, 10, and 15.[18] This relief is not supported by material facts or particulars of the alleged infringements.

15. A claim for *Charter* damages must at minimum allege material facts that would, if proven, (1) establish that a *Charter* right has been breached; and (2) show why damages are a just and appropriate remedy, having regard to whether they would fulfill one or more of the related functions of compensation, vindication of the right, and/or deterrence of future breaches.[19]

16. There are no separate rules for pleading *Charter* claims.[20] The Supreme Court of Canada has defined the substantive content of each *Charter* right, and a plaintiff must plead sufficient material facts to satisfy the criteria applicable to the provision in question. This is no mere technicality; it is essential to the proper presentation of *Charter* issues.[21]

17. The Morkens fail to plead the facts required to satisfy the essential elements of their claims of breaches of sections 7 and 15 of the *Charter*: they do not identify a government law or action which resulted in a risk to their life, liberty, or security of the person and contravened a principle of fundamental justice[22] or which discriminated against them based on immutable or constructively immutable characteristics.[23] Nor does Linda Morken plead any facts to

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[16] Amended Claim at para. 117(b) and (c).
[17] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982 c 11 [***Charter***].
[18] Amended Claim at para. 118(a) and (d), respectively.
[19] *Koehler v. Newfoundland and Labrador*, 2021 NLSC 95 [***Koehler***] at paras. 37-38.
[20] *Mancuso v. Canada (National Health and Welfare)*, 2015 FCA 227 [***Mancuso***] at para. 21.
[21] *Mancuso* at para. 21.
[22] Requirement of section 7: *Ewert v. Canada*, 2018 SCC 30 at para. 68.
[23] Requirement of section 15: *R. v. Sharma*, 2022 SCC 39 at para. 28.

support the claims that the RCMP unlawfully searched her, arbitrarily detained or arrested her, failed to inform her of the reason for her arrest, or denied her access to counsel.[24]

18. Action4Canada, a registered corporation, does not benefit from sections 6, 7, and 15 *Charter* protections, which extend protection only to natural persons.[25] With respect to the alleged breach of its section 2 *Charter* rights, Action4Canada does not plead any facts to form the basis of such a claim.

19. The Amended Claim fails to meet the requirements for a *Charter* remedy. In addition to a lack of material facts related to specific government conduct that could ground a *Charter* violation, the Plaintiffs also failed to establish why damages would be a just and appropriate remedy. The bald assertions and allegations of *Charter* violations, without assertions of bad faith or abuse of power or clear intentional violation of rights with supporting particulars, are not sufficient to meet the requisite threshold for an award of *Charter* damages.[26]

20. In addition to the claims set out in the Relief Sought, the Facts are replete with allegations and arguments, making it impossible for the federal defendants to understand the case they are to meet. For example, Health Canada is implicated in wide-ranging and conclusory allegations of misconduct by vaccine manufacturers and baseless conspiracy theories about the impact of vaccines.[27] Courts have taken judicial notice of the fact that COVID-19 vaccines work, are generally safe, have a low risk of harmful effects, and reduce the severity of symptoms and the risk of a bad outcome from contracting the disease.[28] If the Plaintiffs seek to claim relief in respect of vaccine approval and monitoring decisions made by Health Canada, as the regulator, the proper avenue is a judicial review, per section 18(1) of the *Federal Courts Act*, R.S.C., 1985, c. F-7.

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[24] Per *Charter* sections 8, 9, and 10.
[25] *O'Donnell v. Alberta (Minister of Justice)*, 2024 ABKB 268 at para. 14; *Mancuso* at para. 25.
[26] *Koehler* at para. 79.
[27] Amended Claim at paras. 87-94.
[28] *Parmar v. Tribe Management Inc*, 2022 BCSC 1675 at para. 109; *Steiner v. Mazzotta*, 2022 BCSC 827 at para. 5.

2. The Amended Claim is scandalous, frivolous, and vexatious

21. Pleadings are foundational to the litigation process. They are not a mere technicality. Pleadings serve to clearly, concisely and precisely define the issues of fact and law to be determined, inform the other side of the case to be met, determine the nature and scope of pre-trial procedures, and guide the trial process.[29]

22. A pleading is scandalous if it is so badly drawn that to litigate upon the pleading would require the parties to undertake useless expense or cause them to litigate irrelevant matters. A pleading is frivolous if it is without substance or fanciful. A pleading is vexatious if it is irrelevant to the cause of action or fails to disclose a claim known to law.[30]

23. The Amended Claim is scandalous, frivolous, and vexatious. It fails to comply with the Strike Decision and the subsequent direction of the Court of Appeal. While some egregious conspiracy claims and extraneous footnotes were removed, the Amended Claim continues to include elements that the Strike Decision identified as improper, such as seeking a declaration that administering medical treatment without informed consent constitutes experimental medical treatment contrary to the Nuremberg Code and the Helsinki Declaration[31] and alleging "fraudulent" PCR testing.[32]

24. As discussed above, the Amended Claim fails to plead material facts to establish a reasonable cause of action or support the allegations against Canada. Many of the purported changes in the Amended Claim merely repackage the same substance in the original Claim.[33] It remains impossible to respond to in a reasoned and concise manner.

3. The Amended Claim is an abuse of process

25. A claim may be struck if it abuses the court's process by violating principles of judicial economy, consistency, finality, and integrity of the administration of justice.[34] A claim may

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[29] BCCA Reasons at para. 1.
[30] *Gill v. Canada*, 2013 BCSC 1703 at paras. 8-9.
[31] Strike Decision at para. 52(d); Amended Claim at para. 101.
[32] Strike Decision at para. 52(f); Amended Claim at para. 48.
[33] Paragraphs 236 of the Claim and 76 of the Amended Claim allege improper PCR testing. Paragraphs 286 of the Claim and 88 of the Amended Claim allege that COVID-19 vaccines are "experimental".
[34] *Green v. Proline Management Limited*, 2017 BCSC 1656 [***Green***] at para. 37.

be struck where it is a collateral attach on an administrative decision or fails to clearly plead a cause of action and material facts.

26. Pleadings that fail to satisfy the minimum requirements of the *Rules* are an abuse of the court's process. It is not for the court to "articulate for a litigant a comprehensible and legally recognizable cause of action".[35]

27. The Amended Claim falls short of these essential pleading requirements. Instead of clearly and concisely defining the issues of fact and law, the Amended Claim:

    a. pleads legal conclusions without material facts, contrary to Rule 3-7(9);[36]

    b. includes improper[37] rhetorical statements;[38]

    c. pleads evidence, contrary to Rule 3-7(1);[39]

    d. improperly seeks rulings of the court on issues of science,[40] contrary to this Court's direction in the Strike Decision;[41]

    e. pleads assumptions and speculation about manufacturing and administering vaccines[42], the very nature of which cannot be proven to be true by adducing evidence;[43]

    f. fails to specify, in each case, the defendant(s) against whom the relief is sought, contrary to Rule 3-1(2)(b);[44] and

    g. fails to summarize the legal basis for any of the relief sought as required by Rule 3-1(2)(c), instead stating the legal basis for the claims are "imbedded" in the declaratory relief and damages sought.[45]

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[35] *Green* at para. 38.
[36] Amended Claim at paras. 30-31.
[37] *Johnston v. Rykon Construction Management Ltd.*, 2020 BCSC 572 at para. 27.
[38] Amended Claim at paras. 74, 76(a), 88(a).
[39] Amended Claim at paras. 28, 76(g).
[40] Amended Claim at paras. 87-94.
[41] Strike Decision at paras. 45, 55.
[42] Amended Claim at paras. 37, 49-53, 87-96.
[43] *Operation Dismantle v. The Queen*, 1985 CanLII 74 (SCC), [1985] 1 SCR 441, at para. 27.
[44] See, e.g., Amended Claim at paras. 101, 102, 106, 107, 110, 115.
[45] Amended Claim at para. 122.

4. The Amended Claim cannot be saved by further amendments

28. A pleading should be struck in full where the proposed claim, regardless of form, lacks legal foundation.[46] Permitting a party to further amend its pleadings after a failed attempt serves no purpose other than delay and increased costs.[47] This is particularly so where the plaintiff has had a considerable length of time to "get it right".[48]

29. The Plaintiffs have already had an opportunity to properly plead their claim, with guidance from this Court and the Court of Appeal. They failed to do so. Allowing a further opportunity to amend would serve no purpose other than delay and increased costs.

Improperly named Federal Defendants

30. His Majesty the King in Right of Canada (**HMTK**) and the RCMP should be removed from the style of cause. HMTK is not an appropriately named defendant. Instead, pursuant to section 23 of *Crown Liability and Proceedings Act*, proceedings against the Crown may be taken in the name of the Attorney General of Canada.[49] Furthermore, the RCMP is not a legal entity capable of being sued.[50]

Costs

31. Canada seeks $2500 in costs payable forthwith, pursuant to Rule 14-1(1)(d) and (15). Lump sum costs are an expedient means of avoiding further submissions and litigation.[51]

PART 4: MATERIAL TO BE RELIED ON

1. *Supreme Court Civil Rules*, BC Reg 168/2009;
2. The pleadings and authorities cited above; and
3. Such other authorities and materials as counsel may advise and the court may permit.

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[46] *Camp Development Corp v. Greater Vancouver Transportation Authority*, 2009 BCSC 819 (aff'd 2010 BCCA 284) at para. 19.
[47] *HMB Holdings Limited v. Replay Resorts Inc.*, 2019 BCSC 1138 (aff'd 2021 BCCA 142) at para. 72.
[48] *676083 BC Ltd v. Revolution Resource Recovery Inc.*, 2021 BCCA 85 at paras. 59-60.
[49] *Young v. McLellan*, 2005 BCCA 563 at paras. 2-6.
[50] *Acumar Consulting Engineers Ltd. v. The Association of Professional Engineers and Geoscientists of British Columbia (APEGBC)*, 2014 BCSC 814 at para. 49.
[51] *Mousa v. The Institute of Electrical and Electronics Engineers, Incorporated*, 2014 BCCA 415 at para. 34.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

(a) file an application response in Form 33,

(b) file the original of every affidavit, and of every other document, that

(i) you intend to refer to at the hearing of this application, and

(ii) has not already been filed in the proceeding, and

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

(i) a copy of the filed application response;

(ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

(iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Dated: September 26, 2025

Signature of lawyer for filing party

ATTORNEY GENERAL OF CANADA

Department of Justice Canada
British Columbia Regional Office
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File: LEX-500225643

Counsel for the Applicant

To be completed by the court only:

Order made

[ ] in the terms requested in paragraphs ..... of Part 1 of this notice of application

[ ] with the following variations and additional terms:

.....

.....

.....

Date: .....

[dd/mmm/yyyy]

.....

Signature of [ ] Judge [ ] Associate Judge

Appendix

THIS APPLICATION INVOLVES THE FOLLOWING:

☐ discovery: comply with demand for documents

☐ discovery: production of additional documents

☐ other matters concerning document discovery

☐ extend oral discovery

☐ other matter concerning oral discovery

☐ amend pleadings

☐ add/change parties

☐ summary judgment

☐ summary trial

☐ service

☐ mediation

☐ adjournments

☐ proceedings at trial

☐ case plan orders: amend

☐ case plan orders: other

☐ experts

☒ none of the above

THIS Notice of Application is prepared and served by the Attorney General of Canada whose place of business and address for service is the Department of Justice Canada, British Columbia Regional Office, 900 - 840 Howe Street, Vancouver, British Columbia, V6Z 2S9.